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whether she wishes to abolish the existing divorce laws. From her remarks about vows it would seem that she opposes all divorce of any kind whatsoever, and if so, it seems odd that she should concern herself with divorce-law reform.

E. S. P. HAYNES.

London.

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### BOOK REVIEWS.

HIGHER NATIONALITY: A Study in Law and Ethics. An Address delivered before the American Bar Association at Montreal on September 1, 1913. By Viscount Haldane of Cloan, Lord Chancellor of Great Britain. London: John Murray, 1913. Pp. 45.

Towards the close of this elevated and masterly address, Lord Haldane avows, though in no tone of apology, that he is aware that his discourse has led the American Bar Association into regions which might "seem to belong more to ethics than to law." And it is good that, with the printed word before them, the reading world should be in a position to share the gratitude of the lawyers of the United States and Canada for his guidance. Neither short nor easy is the path that leads from what the world is all too prone to dismiss as the arid and unspeculative domain of law courts and legal practice to high discourse on *Sittlichkeit*, General Will, and International Obligation. Whole mountain ranges may seem to lie between. But these are impotent to stop Lord Haldane. With characteristically large outlook and confident step, and by the aid of what philosophers will recognize as sound Hegelian engineering, he travels serenely on his way with so much reasonableness, not unadorned at times by strokes of humor and eloquence, that even the most cut-and-dried of lawyers must have found himself conducted, not perhaps without astonishment, into a country so vastly more spacious than that from which he had set out. We cannot remember an instance in which "a lawyer speaking to lawyers,"—for so the Lord Chancellor styles himself,—has performed so notable an achievement.

It is fitting that "a lawyer speaking to lawyers" should begin with law; and it is with the nature and growth of com-

mon law and equity that the address opens. We are in the midst of cases, remedies, forms of action, and such like. But it quickly appears that Lord Haldane's object is not to dwell lovingly on cases, but to fasten on the fact that judges and courts, in deciding cases, have all along been building better than they knew, and, indeed, *making* those substantive rules of law which come to recognition and formulation only after many a case has been decided and many a remedy applied. He quotes Sir Henry Maine: "The substantive law has, at first, the look of being gradually secreted in the interstices of procedure."

Now, this power which lawyers exercise of creating, developing, changing the law, in the ordinary course of professional practice, is obviously of itself a mighty and significant influence. It reveals a process whereby acute and well-trained minds may grope their way, by help of precedents and common sense, from small beginnings on to the construction of a great body of substantive law. But it is not to dwell on this that Lord Haldane adverts to it. It is to suggest, before he has done, that lawyers have a part to play in a similar process in a far wider field. And he leads on to this, by finding in the history of common law and equity,—and this is important for his argument,—a reason why the lawyers of England and America, less cabined and cribbed by codes than their brethren of the Continent of Europe, have not confined their interests within the strict limits of their profession, but, on the contrary, have played their part, with conspicuous effect, in public affairs. They have not been a "segregated profession of interpreters." No indeed! Their vocation has called them, as it continues to call them, into "the very heart of affairs." Clearly, the mutterings, not unknown in our day, that there are too many lawyers in politics, would find short shrift from Lord Haldane. He prefers, and quotes, some words of the President of the United States as to the urgent need for "lawyers who can think in the terms of society itself."

Once this larger vista is opened out, law in the narrower and stricter sense is dropped; and in what follows the profession is invited and exhorted to rise to the full height of its responsibilities as nothing less than an organ of national and international *Sittlichkeit*. Some of the best pages of the address,—one can imagine they were highly enlightening to the audience,—are unquestionably those which deal with this manifestly con-

genial topic in which Lord Haldane is on familiar ground. Dropping a passing regret that the English language lacks a word to express this important conception, he impresses Rudolph von Jhering, Fichte, and F. H. Bradley into his service, and defines it in words of his own as "the system of habitual or customary conduct, ethical rather than legal, which embraces all those obligations of the citizen which it is 'bad form' or 'not the thing' to disregard;" or, as elsewhere he puts it, "the spirit and habit of life which this organic entirety (*i. e.*, the Nation) inspires and compels." And from *Sittlichkeit*, thus understood, it is an easy step to a plea for the reality of the general will of a people, which in Lord Haldane's hands is so far from being the nebulous and shadowy conception of speculatists that it is set forth by him as the very root of all high patriotic effort and sacrifice. As indeed we may see for ourselves by turning to "the illustrations with which history abounds of the general will rising to heights of which but few of the individual citizens in whom it is embodied have ever before been conscious even in their dreams."

It is *Sittlichkeit* and the general will, as thus understood, that furnish the backbone of the address. For if Lord Haldane leads his legal audience up to these conceptions with a courage which few perhaps could equal, it is not, we may be sure, to leave them there. He is not a philosopher speaking to philosophers: he is "a lawyer speaking to lawyers." And so having made these root ideas plain, he proceeds to certain applications which bring the whole discussion back with much appropriateness to the occasion that evoked it. These applications involve two steps. The first lies in a question: "Can nations form a group or community among themselves within which a habit of looking to common ideals may grow up sufficiently strong to develop a general will, and to make the binding power of these ideals a reliable sanction for their obligations to each other?" And the second step is to appeal to the lawyers of the Anglo-Saxon world, being as they are "the counsellors of our fellow-citizens in public and in private life alike," to rise to the full responsibilities of this vocation and "to work for the general recognition by society of the binding character of international duties and rights as they arise within the Anglo-Saxon group." If they do that, they will not only be furthering a cosmopolitan enterprise: they will be true to the spirit of

Anglo-Saxon legal tradition. For even as the lawyers of England and America have built up the substantive law of their respective nations tentatively and experientially by the decisions of their courts and judges, so by the wide political and social influence which lawyers are so peculiarly fitted to enjoy, they may play their part in building up towards ever-increasing substantiality that international *Sittlichkeit* which, if only it were realized, would be the strongest of all guarantees,—stronger than treaties or constitutions,—of international peace, concord, and unity. High, indeed, is the enterprise and great the responsibility, and on the note of responsibility the address comes to its close.

It would savor of ingratitude to ask for more than what is thus outlined. The wonder is that Lord Haldane has succeeded in saying so much within the limits of an address. And we may acknowledge that his feet are on firm ground when he plants himself on *Sittlichkeit* and the reality of the general will, as these are to be found in the life of a nation. Nor does the discourse provoke dissent. Rather, it creates a keen desire for its expansion and development; and this in more directions than one.

In the first place, one might wish for a fuller apologia for lawyers as so peculiarly called to stand forth as missionaries of international *Sittlichkeit*. Not that their claims are slight. It is true that their influence, like that of all great professions, goes far beyond their professional practice, and more so across the Atlantic than even in England; it is true that they play an active part in public life; it is true that their own great department of international law brings them even professionally into the larger politics; in a word, it is true that, even now, they think, and may easily come to think more, “in terms of society itself:” and it stands without saying that they possess highly trained capacities for business. And least of all would it become the world to forget the services of the great jurists in expanding the horizon of life. If it did, it might profitably turn to the prayer of Grotius (quoted by Lord Haldane) that God might write the lessons of his “*De Jure Belli et Pacis*” “on the hearts of all those who have the affairs of Christendom in their hands;” or remember the declaration of Bentham (far though he was from *Sittlichkeit* and the general will) that law holds in its hands the happiness of men and nations. Nor, we

may add, would it become any reader of this JOURNAL to forget that the author of "The Pathway to Reality" is, in the world of thought no less than the world of weapons, one of the organizing intelligences of his day. All this is much. Yet we must not close our eyes to the counter-suggestion that even this great profession has its infirmities. The mind of a lawyer need not, to be sure, be a legal mind; because, of course, it may be much more, and like the mind of Lord Haldane, "think in the terms of society." But it is none the less incontrovertible that the legality of the legal mind may be still too much with its possessor when he passes into the wider and less cut-and-dried province of *Sittlichkeit*. To feel the constraining influence of that system of obligations, more is needed than forcible, clear-cut, acute, businesslike minds, expert in drawing contracts and negotiating agreements. We must also have the sympathetic and sensitive response to the instinctive and habitual trend of sentiment and aspiration amongst the organized masses of men which constitute a people. Not that the great profession of the law is to be denied these qualities. It would be inexcusable to say so. Lawyers are already, as Lord Haldane claims, "the counsellors of our fellow-citizens in public and in private life alike." All honor to them for that. And in Lord Haldane himself, if one may be allowed to say it, his fellow-countrymen have found a shining example how law and *Sittlichkeit* may join hands in powerful alliance. Rash and presumptuous would it be, therefore, to hold a brief against such a profession, or to doubt that it will stand comparison with any other class, order, or profession in the State. But it is still, perhaps, not unreasonable to wish for some fuller justification of the very peculiarly prominent influence and responsibility which Lord Haldane claims for it. Nor is there anything which, if we are not mistaken, readers of this address would more relish than a further apologia under his own hand for lawyers as the exponents, prophets, and pioneers of the general will alike in intra-national and international relations.

One further point may be noticed. *Sittlichkeit*, the cornerstone of the address, is a system of requirements which, as Lord Haldane is well aware, and says, can only grow up gradually. Custom is of its essence. The sentiments and ideas, the duties and the rights which it comprises must have sunk so deep into the consciousness of a community as to have come

to be taken for granted; in other and Lord Haldane's words, as obligations which it is "bad form" and "not the thing" to disregard. It has grown with the growth and grown strong with the strength of the organic unity of the national life. This is the secret of its power. It is also, however, the condition of its limitations. For once we pass beyond the close organic unity of the national life and find ourselves in the region of what we hardly know whether to call international relations or international lack of relations, it is no mere whisper of old Nicolo Machiavelli that prompts the suggestion that it exists there, if indeed it exists at all, in so thin and attenuated a form as hardly to be *Sittlichkeit* at all,—a vastly different *Sittlichkeit* at all events from that we know within the organized unity of the nation. Lord Haldane seems to see this. Though he stands forward as a pioneer of international *Sittlichkeit*, he is no visionary. He is far too sane and factual to be unaware that he is presenting an ideal which at best can only be realized after many days. "The prayer of Grotius," he says, "has not yet been fulfilled, nor do recent events point to the fulfillment as being near."

It is, therefore, peculiarly interesting to turn to the considerations in which the address finds some grounds for the hopeful, and indeed optimistic, note on which it terminates. What, in other words, are the organic filaments in which we may discern the beginnings of that vast organic unity which a true international *Sittlichkeit* would involve? Apart from the ideals of men of letters,—of whom Renan, Arnold, and Goethe are cited,—there is "the tendency to seek for a higher standard of ideals in international relations;" there is the claim that "there is to-day little effective challenge of the broad principle that a nation has, as regards its neighbors, duties as well as rights;" there are the treaties between Germany and Austria, between France and Russia; there is the *entente* between France and England; there is the solidarity of the Great Powers in the Balkan troubles; and above all there is the fact, so appropriate to the occasion of the address, that the international group, the United States, Canada, Great Britain, "are coming to a deepening and yet more complete understanding of each other, and to the possession of common ends and ideals, ends and ideals which are common to the Anglo-Saxon group, and to that group alone." In these facts Lord Haldane sees the promise of that

larger *Sittlichkeit* such as may furnish a sanction for international obligation "which has not hitherto," he adds, "attracted attention in connection with international law."

The case might, perhaps, have been strengthened had the Lord Chancellor felt himself at liberty to refer to the sense of community of life, traditions, and destiny that is growing up so hopefully between the group of nations which constitute the British Empire. And in this connection it might be advantageous to supplement Lord Haldane's address by a perusal of Lord Milner's speeches. Imperial unity is no bad seed-plot for a still more comprehensive *Sittlichkeit*. It might at any rate help to bridge the distance between the non-imperial nation, on the one side, and, on the other, the group of independent nations amongst which ties are still so sadly lacking. To dwell on this, however, would, perhaps, have been somewhat inappropriate to the occasion with which Lord Haldane had to deal. And even leaving it altogether out, it is much to have before us, in exposition so lucid, the grounds which a statesman and a thinker has to offer for his sane vision of a future towards which it is evident he believes the world to be moving. No reader of the address can reasonably deny that it is, at very least, a vision which may well make men think and hope.

JOHN MACCUNN.

Tarbet, Scotland.

A HISTORY OF FREEDOM OF THOUGHT. By J. B. Bury, M.A., F.B.A. London: Williams & Norgate. (Home University Library Series.) Pp. 256.

This brilliant book is particularly timely at the present moment when, in England at least, there are indications that the tide of rationalism which, in the nineteenth century, seemed likely to overwhelm all the old landmarks of prejudice and superstition, is stagnant at last, if it has not actually begun to ebb. Quite recently we have had a number of prosecutions for blasphemy under a law which, as Professor Bury observes, is never put in motion except against the poor and ignorant. Clerical influence continues to make reform of the cruel and antiquated English divorce law impossible. Public opinion is apathetic in face of all attempts to abolish the censorship which shackles our drama. The churches, in spite of their dissensions,